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ABSTRACT

At the heart of the Tree City USA program are four basic requirements: The community must have the following: (1) a tree board or department; (2) an annual community forestry program with financial provisions for trees and tree care; (3) an annual Arbor Day proclamation and observance; and (4) a tree ordinance. Sections of a model tree ordinance are presented, explained, and illustrated with actual examples. Also discussed is the book upon which the model ordinance is based, "Municipal Tree Ordinance Manual," based on work by Philip J. Hoefer. Additional sources of information about trees and conservation are described on the back cover of the bulletin. (MCO)

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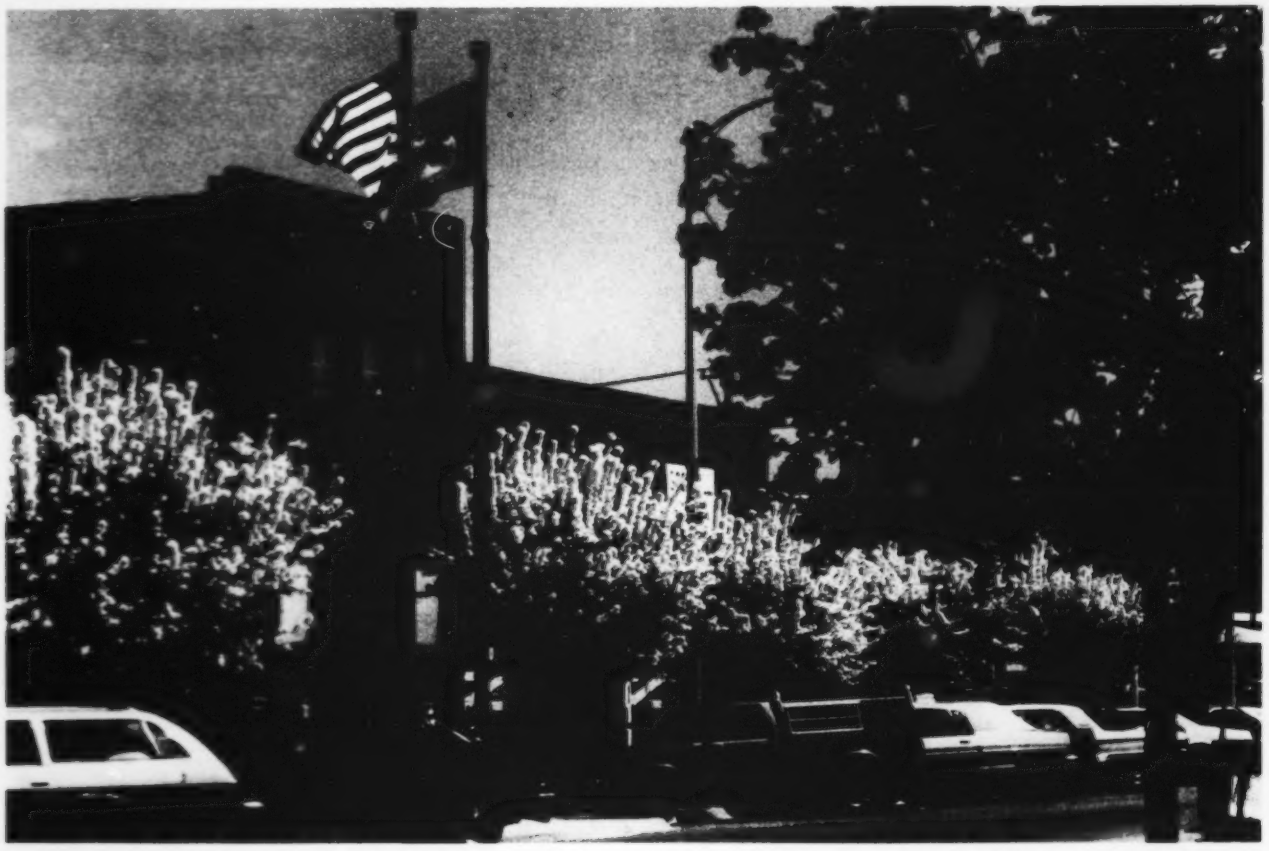
TREE CITY USA BULLETIN
for the
Friends of Tree City USA

Bulletin No. 9
James R. Fazio, Editor

How To Write a Municipal Tree Ordinance



Tree City USA is a powerful force for the promotion of tree care and urban forestry. It is a program that has caught the imagination of citizens, elected officials and urban tree professionals. Over 1,000 communities now fly the flag of membership, a composite area that is home to some 60 million Americans.

At the heart of the Tree City USA program are four basic requirements: The community must have (1) a tree board or department, (2) an annual community forestry program backed by the expenditure of at least $2 per capita for trees and tree care, (3) an annual Arbor Day proclamation and observance, and (4) a tree ordinance.

In this special issue of *Tree City USA Bulletin*, sections of a model ordinance are presented, explained and illustrated with actual examples. Not every section will be appropriate to all communities, and there are others in use that are not included in this general coverage of the topic.

The purpose of this issue is to provide a starting point for the thousands of communities that do not have an adequate tree ordinance. Although an ordinance is only as good as the administrative program that backs it up — including support for education and, when necessary, enforcement — a municipal tree ordinance and involvement in the Tree City USA program are giant strides in the direction of healthier urban trees and a quality environment.

John Rosenow

John Rosenow, Executive Director
National Arbor Day Foundation

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Why a Tree Ordinance?

Ordinances reflect the values of a community, the values its residents believe are worth protecting to maintain their quality of life and an environment that is both safe and pleasant. A community's trees, often called the "urban forest," are very much the kind of community asset that deserves to be protected and managed for the common good.

A tree ordinance encourages beautification, air cooling and purification, noise abatement, property value enhancement and the other attributes of trees within a city. It also enables citizens to prevent and control the spread of diseases, to preserve trees in the path of development, and to avoid unnecessary costs associated with sewer clogging, sidewalk replacement and tree-related accidents. An ordinance may also give force and direction to professional tree care within the municipality's work force and helps control unscrupulous or careless operators.

Ordinances vary in length and complexity, but the key to effectiveness is to write the ordinance simply, clearly and tailored to the needs of *your* community. In the end, a tree ordinance is just another tool for proper tree care. Like any tool, it needs to be of high quality, matched properly to the job, and used with skill and care.

Behind the Model Ordinance

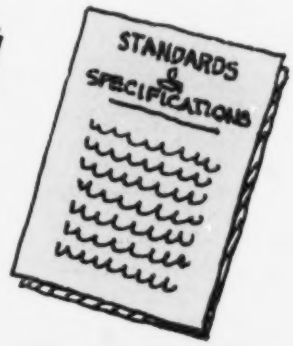
The ordinance sections and their descriptions that follow are based largely on the work of Philip J. Hoefer of the Colorado State Forest Service. His compilation resulted in a new publication, *Municipal Tree Ordinance Manual,* that was developed by the Municipal Arborists and Urban Foresters Society, a special interest group of the International Society of Arboriculture (ISA). The manual has been published by ISA and supersedes its earlier publication, *A Standard Municipal Tree Ordinance,* that has been widely used since 1972. We gratefully acknowledge permission by the author and the societies to use excerpts from their publication, and we encourage you to obtain a copy of the manual as referenced on page 8.

In its entirety, the manual consists of an introduction, sections for possible inclusion in an ordinance, three sample ordinances (one quite short, the other more comprehensive, and the 1972 standard ordinance), and a "standards and specifications" section. The latter consists of detailed guidelines to arboricultural practices such as planting and pruning, maintenance, removal, landscaping, contracting, and similar activities that are important in any community forestry program.

A standards and specifications section is recommended as a separate but companion part of a municipal ordinance. This is because including such a large amount of detail directly in the ordinance itself is cumbersome and difficult to change. For greater flexibility it is better to keep the ordinance brief, but to authorize the designated forestry body (board, commission or department) to promulgate rules, regulations, standards and specifications. These can be published separately and revised as necessary, but still be subject to final approval by the city council or other elected officials.

Importantly, each community has different circumstances that need to be addressed in an ordinance and its accompanying standards and specifications. Use the model ordinance sections and the ordinances of other communities as starting points for developing your own ordinance or to revise one that is not working well, but add or delete sections to match the unique needs and circumstances of *your* community. Be sure to use the services of an attorney to review or help write all drafts to assure that your final product is legally sound as well as beneficial to the future of your community's trees.

A workable ordinance should be short.



Detailed performance standards and specifications are best placed in a separate document.

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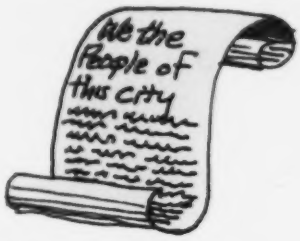
Suggested Sections for a Tree Ordinance

Although no two tree ordinances will be exactly alike, there are some basic elements that will help assure that the document is workable and effective. These elements are called *sections*, and they are presented here with examples and principles that illustrate *why* each one is necessary.

I. PURPOSE

PRINCIPLE: An opening statement that clearly sets forth the purpose of the ordinance will help avoid ambiguity in interpretation. This initial section is usually capitalized and in bold print.

Example: **IT IS THE PURPOSE OF THIS ORDINANCE TO PROMOTE AND PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY PROVIDING FOR THE REGULATION OF THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES, SHRUBS, AND OTHER PLANTS WITHIN THE CITY OF _____ .**



A clearly stated purpose prevents misinterpretation.

II. AUTHORITY AND POWER

PRINCIPLE: Someone within city government must have the clearly designated authority to administer the provisions of the ordinance. This section defines, designates, or creates a department, board, commission, or person responsible for the planting, care, and protection of the city's trees.

Example: There is hereby created and established a City Tree Board for the City of _____, which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the city council. Members of the board shall serve without compensation.

[HOME RULE AUTHORITY: In order to avoid conflicts with state laws governing trees, a statement transferring regulations to the city may be necessary. State, county and city laws will explain this process. If needed, the statement should be added as a section.]

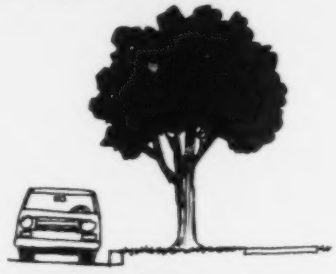
A tree ordinance and tree board or commission usually go hand in hand. Limited and staggered terms of office lend vitality and continuity to a board.

III. TERM OF OFFICE

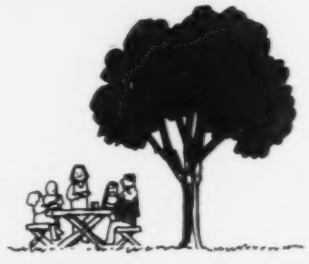
PRINCIPLE: Reasonable and clearly stated terms of office for volunteer boards or commissions will help infuse the program with new ideas on a periodic basis and will help avoid the problems created by obstructionists with life or long-term tenure. This section defines length of service, a method for filling vacancies, and the number of consecutive terms (if any) that can be served. Staggering terms can help assure continuity and stability.

Example: The term of the five persons to be appointed by the mayor shall be three years, except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

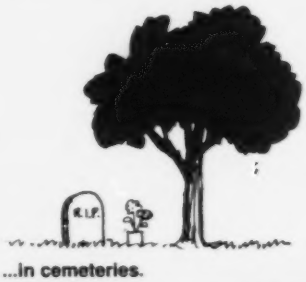
An ordinance must specify what property it covers, such as...



...along rights-of-way



...in public parks



...in cemeteries.

A license requirement protects both trees *and* property owners.

An insurance provision helps protect city government and unwary home or business owners who hire someone to do tree work.

IV. APPLICABILITY

PRINCIPLE: This section is needed to make it clear what property is covered by the ordinance. This usually includes trees on rights-of-way, public parks, cemeteries, and other public grounds, and sometimes even on private property.

Example: This ordinance provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places of the city; and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.

V. DEFINITIONS

PRINCIPLE: To prevent misunderstanding, words that may be unfamiliar to lay citizens should be defined. If a standards and specifications appendix accompanies the ordinance, many arboricultural terms can be placed there instead of in this section.

Examples of words or terms to define: arborist, contractor, city forester or city arborist, tree, public tree, private tree, tree lawn, parkway, right-of-way, easement, etc.

VI. LICENSING

PRINCIPLE: One way to protect trees *and* citizens from irresponsible companies or individuals who pose as arborists is to require practitioners to have a license. Conditions for obtaining the license may even require that the person be a *certified* arborist. (See Bulletin No. 6.) This section provides licensing authority and includes details such as fees, frequency of renewal, testing procedures, types of licenses, suspensions and appeals, surety bonds, showing identification on equipment, etc.

Example: It shall be unlawful for any person to engage in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees, shrubs or vines within the City without first producing evidence of certification/license before the City. (An explanation of requirements and fees is then presented.)

VII. INSURANCE

PRINCIPLE: Arborists work under dangerous circumstances and around high value property. Since it is often difficult for homeowners to ascertain whether property and tree workers are adequately covered, or to insist on such coverage, a provision in the tree ordinance can easily correct the situation.

Example: Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of $300,000 for bodily injury or death and $100,000 property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

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VIII. LANDSCAPING

PRINCIPLE: This section can assure that trees will be a part of new developments. But planted vegetation can be an asset or a liability — depending on what is planted and how it is done. This part of the ordinance can define a process for having new landscape plans reviewed and approved by the city forester or tree board, with the issuance of building permits only after such a review.

Example: In new subdivisions or when the development of commercial property occurs, the city forester will review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

IX. TREE PLANTING, MAINTENANCE, AND REMOVAL

PRINCIPLE: Good tree care and management is possible only if people have specific information about practices that result in safe, healthy trees that contribute to a quality environment rather than create problems. The purpose of this section is to provide that information in the form of requirements. In many ways, it is the heart of a good ordinance. Actually, the material in this section is best included in a separate standards and specifications chapter, but placing it directly in the ordinance is an option. Either way, all specifications should be reviewed at least every five years, and should include such specifics as desirable and undesirable tree species, spacing, pruning techniques, hazardous trees, sight obstruction, and vandalism.

Examples:

Tree Species — The Town Tree Board develops and maintains a list of desirable trees for planting along streets in three size classes: small, medium and large. A list of trees not suitable for planting will also be created and enforced by the Tree Board.

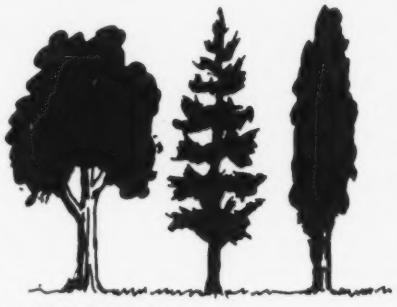
Spacing — The spacing of street trees will be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect.

Utilities — No street trees other than those species listed herein as small trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

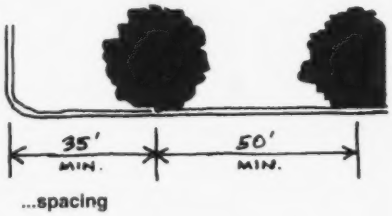
Distance from Curb and Sidewalk — The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in Section ___ of this ordinance, and no trees may be planted closer to any curb or sidewalk than the following: small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.

Topping — It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Tree Board.

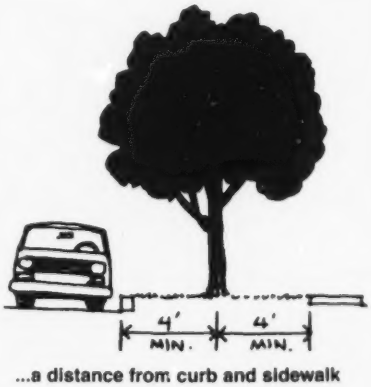
Important details of planting and tree care can be placed in the ordinance or in an appendix, or, better, in a separate standards document. Specification examples include...



...suitable species



...spacing



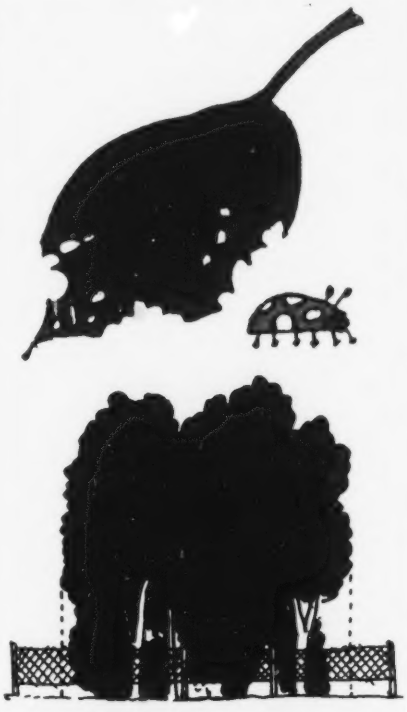
...a distance from curb and sidewalk

...and acceptable pruning practices.

X. ADJACENT LANDOWNER RESPONSIBILITY

PRINCIPLE: Quite naturally, homeowners often want to plant trees or do work on trees that abut their property but are on a public right-of-way. This section describes a process by which the homeowner can do the work, but only in accordance with the sound principles of urban forest management and arboriculture.

Example: No person shall plant, remove, cut above the ground, or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the city forester. The person receiving the permit shall abide by the standards set forth in this ordinance.



A protection provision is important for safeguarding mature trees and other existing vegetation from insects, construction damage or, in some cases, removal.

XI. TREE PROTECTION

PRINCIPLE: Protecting existing trees is a major challenge. Therefore, more and more progressive communities are using this section not only to prevent insect and disease epidemics, but also to protect trees on both public and private property from damage during construction. Increasingly, another use of this section is to identify and protect trees of historic value or unusual qualities (called *landmark trees*). Requiring permits for *all* tree removals is one way to achieve these goals.

Example 1:

Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the city forester shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove or otherwise control such condition within reasonable time to be specified in such notice.

Example 2:

The following guidelines and standards shall apply to trees proposed (in a developer's "tree protection plan") to be retained... (Rules are then specified such as not grading or locating utilities within the tree's dripline, placing protective barriers around trees, preventing siltation, etc. Or, developers may be required to preserve a percent of forested tracts, plant trees in open space, or pay into a county tree planting fund so that there is no net loss of tree cover.)

Example 3:

The city forester shall have as one of his/her duties the location, selection and identification of any trees which qualify as "Landmark Trees." A tree may qualify as a Landmark Tree if it meets one or more of the following criteria: (Criteria may include species rarity, old age, association with a historical event or person, abnormality, scenic enhancement, etc.)

Action by officials is sometimes needed on private property for purposes of public safety.

XII. PRIVATE TREES

PRINCIPLE: Since trees on private property often affect the safety and welfare of other trees and people other than the owner, a provision is needed to allow community action in such cases. This section provides authority to inspect private trees and designate them as public nuisances when necessary.

Example: The city forester or his/her official designee has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance. (Note: An appropriate legal definition of a public nuisance is needed here, such as *any tree with an infectious disease or insect problem; dead or dying trees; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to safety, etc.* Also needed is a description of the legal process for notifying property owners and causing abatement of the nuisance.)

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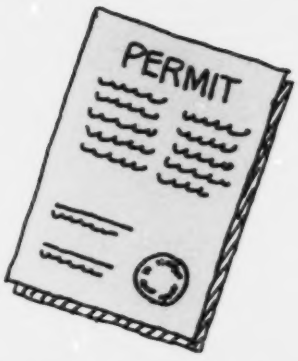
XIII. PERMITS

PRINCIPLE: Permits provide a way to make certain that anyone who plants, does work on or removes a public tree (and sometimes private trees) is knowledgeable and capable of doing the job right. Permits also are a means to assure compliance with standards and specifications, allow for follow-up inspections, and generally serve as a tool for enabling a community to control the future of its urban forest.

Example: No person except the City Arborist, his/her agent, or a contractor hired by the City Arborist may perform any of the following acts without first obtaining from the City Arborist a permit for which no fee shall be charged: (treatments and actions are listed, each one specifying whether it applies to trees on public land or to any tree, public or private).

Note: An example of a permit form is included in the MAUFS/ISA "Municipal Tree Ordinance Manual."

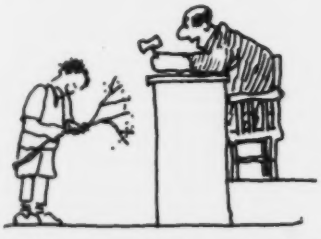


Permits help make sure everyone knows the rules and best practices before doing tree work.

XIV. ENFORCEMENT

PRINCIPLE: For an ordinance to be more than a piece of paper, authority must be given to the city forester or other official to enforce the provisions. This includes the right to issue notices of violations, notices to perform work and to stop work.

Example: The city forester shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the city. (Details about the process of rule-making, review and approval by the governing body, and enforcement need to be included.)



The legal process to be used against violators must be clearly spelled out.

XV. PENALTIES, CLAIMS AND APPEALS

PRINCIPLE: Enforceable, meaningful ordinances must contain provisions for penalties and violations. Most cities have standard statements that will work in a tree ordinance, or one may be written specifically related to trees. There needs to be a process for the city to do needed work if a landowner fails to comply with an order, and an appeal route.

Examples: *Violations* — Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provisions of the ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed $500 for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens,* as published by the International Society of Arboriculture.

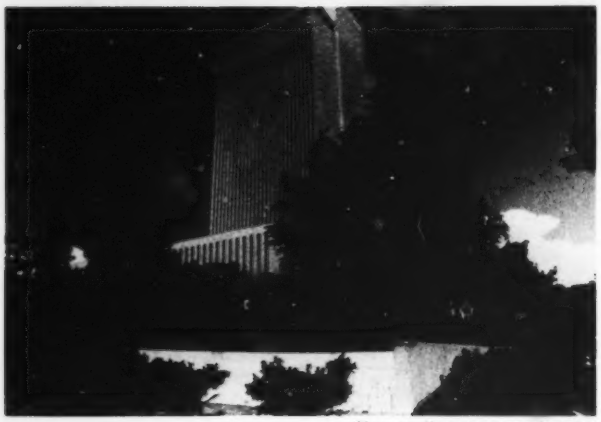
Assessment of Claim — In the event that a nuisance is not abated by the date specified in the notice, the City Arborist is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

Appeals — (Include your municipality's standard appeals process.)

Each community's ordinance must be written to serve that community's unique needs and circumstances.

XVI. OTHER

Because circumstances vary so widely between municipalities, there may be other sections necessary to fashion an ordinance to the needs of your community. These range from sections that local government may require in all its ordinances (such as a severability clause that states that if any section of the ordinance is found to be invalid or unconstitutional, it does not affect the validity of remaining sections) to how the urban forestry program is to be financed. The ordinance must fit your town's needs.



Tree ordinances are important for big cities and small towns.

Other Sources of Information

Tree City USA Bulletin will inform readers of helpful, up-to-date publications which provide more depth or that are readily available for community distribution. The editor welcomes sample copies to consider for inclusion in future editions.

It is recommended that anyone developing a new tree ordinance or revising an existing one first obtain a copy of the following manual. Sale price is $25.00.

Municipal Tree Ordinance Manual
International Society of Arboriculture
P.O. Box 908
Urbana, IL 61801

Copies of tree ordinances from other cities will be invaluable in deciding what to include and how to fashion the language in your ordinance. Below is an excellent example of a tree ordinance that has been attractively reproduced for public distribution. Fort Collins' urban forester, Tim Buchanan, has also written a model standards and specifications document as a companion to the tree ordinance.

Contact:
Office of the City Forester
Parks & Recreation Department
413 S. Bryan
Fort Collins, CO 80521

For copies of other exemplary tree ordinances, including those with strong provisions for protecting existing trees (See Section XI), contact The National Arbor Day Foundation.

American Forestry Association and the National Urban Forest Council are offering assistance to communities facing the ordinance dilemma through an urban-forestry information system called TreeNet. Information on TreeNet can be obtained by writing TreeNet, P.O. Box 52105, Durham, NC 27717, or calling (919) 493-1087.

For a historical and national overview of tree ordinances, articles in professional journals may be reviewed. These include:

Journal of Forestry (5400 Grosvenor Lane, Bethesda, MD 20814)
"Protecting Privately Owned Urban Woodlands: Trends in Municipal Tree Ordinances." 1976, pp. 622-624.

Journal of Arboriculture (P.O. Box 908, Urbana, IL 61801)
"Ordinance Control of Street Trees." 1975, pp. 212-216.
"Challenges of Municipal Arboriculture." 1976, pp. 217-220.
"An Analysis of Tree Ordinances: The Example of New Jersey." 1977, pp. 191-197.
"Street Tree Policies in Ohio Towns." 1980, pp. 185-191.
"A Tree Management Ordinance for Huntsville, Alabama." 1982, pp. 81-82.
"Municipal Ordinances' Relation to Trees." 1982, pp. 128-136.
"Municipal Tree Management in New Jersey." 1984, pp. 229-235.

To order additional Bulletin copies... Friends of Tree City USA members may obtain a single copy of any Tree City USA Bulletin free of cost. Quantities of any issue are available at 25 for $6.25 or 500 for $100. To order, specify the issue number and quantity, and make your check payable to: The National Arbor Day Foundation, 100 Arbor Avenue, Nebraska City, NE 68410.

The Bulletins available are:

- No. 1 *How to Prune Young Shade Trees*
- No. 2 *When a Storm Strikes*
- No. 3 *Resolving Tree-Sidewalk Conflicts*
- No. 4 *The Right Tree for the Right Place*
- No. 5 *Living with Urban Soils*
- No. 6 *How to Hire an Arborist*
- No. 7 *How to Save Trees During Construction*
- No. 8 *Don't Top Trees!*
- No. 9 *How to Write a Municipal Tree Ordinance*

To Join the Friends of Tree City USA...to receive a subscription to the Tree City USA Bulletin...and to become more involved in the urban forestry movement in your town and throughout America, send a $10 dues-donation to Friends of Tree City USA, National Arbor Day Foundation, 100 Arbor Avenue, Nebraska City, NE 68410. Make your check payable to National Arbor Day Foundation.

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TREE CITY USA

The Tree City USA program is sponsored by The National Arbor Day Foundation in cooperation with the U.S. Forest Service and National Association of State Foresters. To achieve the national recognition of being named as a Tree City USA, a town or city must meet four standards:

Standard 1: A Tree Board or Department
Standard 2: A City Tree Ordinance
Standard 3: An Annual Community Forestry Program
Standard 4: An Arbor Day Observance and Proclamation

Each winning community receives a Tree City USA flag, plaque, and community entrance signs. Towns and cities of every size can qualify. Tree City USA application forms are available from your state forester or The National Arbor Day Foundation.

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